

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WEST VIRGINIA CONSOLIDATED
PUBLIC RETIREMENT BOARD,
Petitioner,

v.

Civil Action No.: 06-C-2360
(Judge Stucky)

JERRY ALLEN WEAVER, a
retiree of the West Virginia Public
Employees Retirement System,
Respondent.

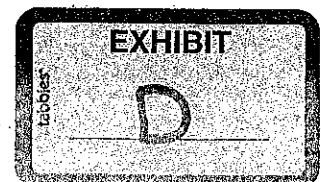
ORDER TERMINATING BENEFITS

On the 19th day of June, 2007, came the Petitioner, West Virginia Consolidated Public Retirement Board, by Executive Director Anne Werum Lambright and by counsel, J. Jeaneen Legato, and came the Respondent, Jerry Allen Weaver, by counsel, Alexander Macia, pursuant to a hearing for oral argument on the petition in the above-captioned case.

Whereupon, the Court having reviewed the pleadings submitted and having heard the arguments of counsel, hereby adopts the following *Findings of Fact*, *Conclusions of Law*, and *Ruling*:

Findings of Fact

1. Respondent, Jerry Allen Weaver, is a retiree of the Public Employees Retirement System (PERS). He retired on January 1, 2006. He has 27 years and 6 months of service and currently receives a monthly pension annuity benefit;
2. The Petitioner, West Virginia Consolidated Public Retirement Board, is the statutory administrator of various West Virginia public pension systems, including the West Virginia Public



Employees Retirement System (PERS);

3. In 1980, the Respondent, Jerry Allen Weaver, was elected to the position of Assessor for Lincoln County and remained in that position, repeatedly winning reelections, until his retirement on January 1, 2006;

4. On December 27, 2005, Respondent entered a plea of guilty to one felony count of *Conspiracy to Buy Votes*, a violation of 18 U.S.C. §371. By Order entered on January 30, 2006 by John T. Copenhaver, Jr., United States District Judge, the Respondent was adjudged guilty of the felony offense;

5. Respondent's felony conviction involved acts committed by him during the years of 1990 through 2004. During this time period, the Respondent was the elected Assessor for Lincoln County, West Virginia;

6. The felonious acts committed by the Respondent occurred while he was an elected official and a contributing member of the Public Employees Retirement System (PERS);

7. On September 18, 2006, Petitioner sent written notice to the Respondent informing him that the Board believed based upon his felony conviction he had rendered *less than honorable service*. By letter dated October 25, 2006, counsel for Respondent requested that the Petitioner seek a judicial determination as to whether Respondent had rendered *less than honorable service*; and,

8. On November 6, 2006, counsel for Petitioner filed the *Petition of West Virginia Consolidated Public Retirement Board for Termination of Benefits*. On March 6, 2007, counsel for Petitioner filed *Petitioner's Brief in Support of Petition to Terminate Benefits*. On May 15, 2007, counsel for Respondent filed *Memorandum of Law of Jerry Allen Weaver in Opposition to the Motion of the West Virginia Consolidated Public Retirement Board for Termination of Benefits*. On June 19, 2007, the Court heard oral arguments on the briefs.

Conclusions of Law

1. Pursuant to West Virginia Code §5-10A-4, this Court has proper venue and jurisdiction over the parties;

2. Pursuant to West Virginia Code §5-10D-1, the Petitioner, West Virginia Consolidated Public Retirement Board, is charged with administering the Public Employees Retirement System as well as other various public retirement plans;

3. Legislative intent regarding the termination of public pension benefits for those who perform less than honorable service is clearly expressed in West Virginia Code §5-10A-1, *Findings and declarations*, which states as follows:

"The Legislature finds and declares that every retirement plan instituted and created under the laws of this state has from the inception thereof contemplated and each now contemplates that the service rendered by any participating public officer or employee shall at all times be honorable. The Legislature further finds and declares that honorable service is a condition to receiving any pension, annuity, disability payment or any other benefit under a retirement plan";

4. Pursuant to West Virginia Code §5-10A-2(e)(2), "less than honorable service" is defined as a "conviction of a participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment";

5. The actions underlying the felony offense to which Respondent pled guilty constitute conduct related to his employment and occurred during his employment;

6. At common law, as under West Virginia Code §5-10A-1 through §5-10A-10, "a public employee's service must be honorable at all times, and if not, there is a total forfeiture of the public pension". West Virginia Public Employees Retirement System v. Dodd, 396 S.E.2d 725, (W.Va. 1990);

7. The Supreme Court of West Virginia has previously held that "even without an express statutory requirement of honorable public service, it is, of course, axiomatic that one of the fundamental purposes of the pensioning of civil servants is to secure good behavior and the maintenance of reasonable standards of discipline during service." "In other words, public service, compensated at public expense, is a public trust and necessarily implies faithful service." *Id.* at 728, quoting *Fox v. Board of Trustees*, 135 S.E.2d 262, also see *W.Va. Const.* art. III, §2. "Simply put, public pensions, unlike private-sector pensions, are premised in part upon faithful service of the public trust; therefore, a breach of that trust leads to a forfeiture of a public pension." *Id.* at 734;

8. A fundamental breach of the public trust occurred when an elected official, Respondent, feloniously engaged in a *conspiracy to buy votes* during elections in which he was a candidate;

9. Respondent's felony conviction is related to his elected position. Respondent became a member of the West Virginia Public Employees Retirement System (PERS) by virtue of holding an elected office and remained a member by repeatedly winning elections. He was convicted of corrupting many of the elections which triggered his eligibility and allowed for his continued participation in the public funded pension system (PERS);

10. Pursuant to West Virginia Code §5-10A-1, et. seq., the Respondent, Jerry Allen Weaver, has rendered *less than honorable service* and as a consequence is legally ineligible to receive any benefits as a retirant of the Public Employees Retirement System; and,

11. Pursuant to West Virginia Code §5-10A-5 and §5-10A-6, the Petitioner is charged with terminating a participant's membership and refunding his or her contributions plus interest upon a judicial determination that the member has performed less than honorable service.

Ruling

The Court hereby finds that the Respondent, Jerry Allen Weaver, has rendered *less than honorable service* as defined by West Virginia Code §5-10A-2(e)(2). It is **ORDERED** and **ADJUDGED** that Respondent's, Jerry Allen Weaver's, membership in the Public Employees Retirement System be terminated pursuant to West Virginia Code §5-10A-1, et. seq., and that his past employee contributions together with statutory interest be refunded to him minus any benefits he has previously received.

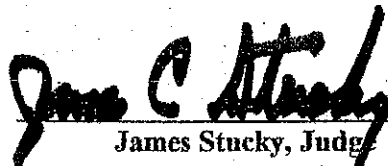
The Petitioner is directed to terminate Respondent's retirement account and refund Respondent's employee contributions plus interest minus any benefits he has previously received.

The Court notes the objection and exception of the Respondent to this ruling.

This is a Final Order.

The Court **ORDERS** the Circuit Clerk of Kanawha County to strike this matter from the docket and to send a certified copy of this Order to all counsel of record.

ENTERED this 23rd day of July, 2007.


James Stucky, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 23
DAY OF July, 2007. CLERK
CATHY S. GATSON
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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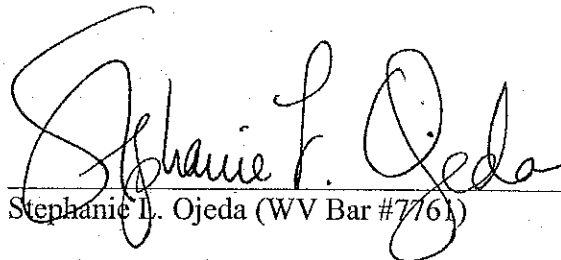
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CERTIFICATE OF SERVICE

I, Stephanie L. Ojeda, hereby certify that on this 19th day of October, 2007, the foregoing
"Jerry Allen Weaver's Petition For Appeal" was served upon the following individuals and/or
counsel to this action by depositing a true copy thereof in the United States First Class mail,
postage prepaid, and addressed as follows:

*J. Jeaneen Legato
Counsel to the Board
State Capitol Complex
Building 5, Room 1000
Charleston, WV 25305*


Stephanie L. Ojeda (WV Bar #7761)